

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

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U.S. DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA  
2014 MAY -8 P 12:25

Vincent J. Beaton,

Petitioner,

v.

Michael McCall, Warden,

Respondent.

No. 9:13-cv-2336-RMG

**ORDER**

This matter comes before the Court on the Report and Recommendation (“R&R”) of the Magistrate Judge recommending that the Court grant Respondent’s motion for summary judgment, deny Petitioner’s motion for summary judgment, and dismiss this petition with prejudice. (Dkt. No. 41). As set forth below, the Court agrees with and adopts the R&R as the order of the Court.

**Background**

Petitioner, a state prisoner proceeding pro se, filed this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. (Dkt. No. 1). Pursuant to 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2)(c) DSC, this matter was automatically referred to a United States Magistrate Judge for pretrial handling. Petitioner then filed a motion for summary judgment, (Dkt. No. 25), and Respondent filed a motion for summary judgment, (Dkt. No. 30). Respondent and Petitioner then filed responses opposing one another’s motions. (Dkt. Nos. 32, 37). The Magistrate Judge then issued the present R&R. (Dkt. No. 41). Petitioner then filed timely objections to the R&R. (Dkt. No. 43).

### **Legal Standard**

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and the responsibility for making a final determination remains with this Court. *Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). This Court is charged with making a de novo determination of those portions of the R&R to which specific objection is made. Additionally, the Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). This Court may also “receive further evidence or recommit the matter to the magistrate judge with instructions.” *Id.*


### **Discussion**

After review of the record, the R&R, and Petitioner’s objections, the Court finds that the Magistrate Judge applied sound legal principles to the facts of this case and therefore agrees with and wholly adopts the R&R as the order of the Court. In his objections, Petitioner does not dispute the Magistrate Judge’s analysis or conclusions, but rather requests this Court grant him leave to return to state court so that he may “exhaust his state remedies to the defaulted claims as well as additional grounds for relief which he just became aware of.” (Dkt. No. 43). The Court finds the Magistrate Judge properly applied the law and that dismissal of a claim as procedurally defaulted is proper and not a basis for returning an action to state court. *Breard v. Pruett*, 134 F.3d 615, 619 (4th Cir. 1998). Further, Petitioner’s argument that he has new grounds for relief does not prevent dismissal of his petition. Petitioner does not say what these new grounds are, and the Court finds the Magistrate Judge properly ruled on the grounds raised in the petition. *See Al-Amin v. Stevenson*, No. 0:10-cv-2023-CMC, 2011 WL 3439531 (D.S.C. Aug. 5, 2011) (citing *Rhines v. Weber*, 544 U.S. 269 (2005)) (denying motion to stay habeas action to “properly exhaust” defaulted claims and for newly discovered evidence).

**Conclusion**

As set forth above, the Court agrees with and adopts the R&R as the order of the Court. (Dkt. No. 41). Accordingly, the Court grants Respondent's motion for summary judgment, (Dkt. No. 30), denies Petitioner's motion for summary judgment, (Dkt. No. 25), and dismisses this petition with prejudice.

**AND IT IS SO ORDERED.**

  
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Richard Mark Gergel  
United States District Court Judge

May 8, 2014  
Charleston, South Carolina